

## Message Text

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ORIGIN L-03

INFO OCT-01 AF-10 EUR-12 EA-10 IO-13 ISO-00 MCT-01  
SSO-00 SS-15 NSCE-00 PM-05 CIAE-00 INR-10 NSAE-00  
DODE-00 INRE-00 PA-01 /081 R

DRAFTED BY L/SFP:LGFIELDS, JR:NMC  
APPROVED BY L/SFP:LGFIELDS, JR.  
L/AF - MRS. ELY  
AF/W - MR. KIRKPATRICK  
M/CT - AMB. ISHAM (DRAFT)  
-----013985 162226Z /75

O R 162114Z MAR 78  
FM SECSTATE WASHDC  
TO AMEMBASSY LOME IMMEDIATE  
INFO AMEMBASSY ABIDJAN  
AMEMBASSY ACCRA  
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AMEMBASSY PARIS  
AMEMBASSY ROME  
AMEMBASSY SEOUL  
AMCONSUL ZURICH  
USMISSION USUN NEW YORK

S E C R E T STATE 067995

E.O. 11652: XGDS-2

TAGS:PINT PINS PEPR TO US SZ CA IT KS GH

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SUBJECT: TOGOLESE REPORTEDLY POSSESS HARD INFORMATION  
ON ABORTED MERCENARY RAID OF OCTOBER 1977

REF: TOGO 848

1. PURSUANT TO REQUEST OF REFTTEL FOR GUIDANCE ON LEGAL  
ISSUES RELATIVE TO POSSIBLE INVOLVEMENT OF U.S. CITIZENS

IN ABORTED ASSASSINATION ATTEMPT AGAINST PRESIDENT  
EYADEMA IN OCTOBER 1977, FOLLOWING INFORMATION IS PROVIDED:

2. THERE IS NO EXTRADITION TREATY BETWEEN TOGO AND UNITED STATES; THEREFORE, U.S. COULD NOT EXTRADITE SUSPECTS BLEMING AND CLENEDENNEN, EVEN IF THEY WERE WITHIN U.S. JURISDICTION AND THE OBJECTS OF A FORMAL REQUEST FOR EXTRADITION.

3. PARA 6 REFTTEL SUGGESTS THAT THERE WAS NO QUOTE ACTUAL CRIME UNQUOTE AND, THEREFORE, QUOTE NO BASIS FOR DETENTION OF REPORTED SUSPECTS. UNQUOTE UNDER CURRENT U.S. LAW AN ATTEMPT TO ASSASSINATE PRESIDENT EYADEMA IN TOGO IS NOT A CRIMINAL OFFENSE. ACT FOR PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS (PUBLIC

LAW 94-467) ESTABLISHES EXTRA-TERRITORIAL JURISDICTION FOR U.S. COURTS TO PROSECUTE PERSONS WHO CONSPIRE TO MURDER QUOTE FOREIGN OFFICIALS UNQUOTE (WHICH INCLUDES QUOTE CHIEFS OF STATE OR THE POLITICAL EQUIVALENT, PRESIDENT, VICE PRESIDENT UNQUOTE ETC.) OR QUOTE INTERNATIONALLY PROTECTED PERSONS UNQUOTE (WHICH INCLUDES QUOTE CHIEFS OF STATE, EQUIVALENT HEADS OF GOVERNMENTS UNQUOTE, ETC.)(18 U.S.C. SECTION 1117); HOWEVER, UNDER THE STATUTORY DEFINITION, THIS WOULD ONLY APPLY TO SUCH PERSONS WHEN THEY ARE OUTSIDE OF THEIR COUNTRY. THIS LAW  
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WAS ENACTED TO IMPLEMENT THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS (ADOPTED BY THE U.N. GENERAL ASSEMBLY DECEMBER 14, 1973 AND ENTERED INTO FORCE ON FEBRUARY 20, 1977).

(FYI: TOGO IS NOT PARTY TO THIS CONVENTION. AFRICAN COUNTRIES WHICH ARE PARTIES INCLUDE GHANA, LIBERIA, MALAWI, RWANDA AND ZAIRE. DISCUSSION ON THIS ATTEMPT ON THE LIFE OF PRESIDENT EYADEMA MIGHT PROVIDE AN EXCELLENT OPPORTUNITY TO FOCUS ATTENTION ON THE CONVENTION AND SUGGEST THAT GOT CONSIDER ACCESSION. END OF FYI)

4. LEGISLATION TO ESTABLISH AS A CRIMINAL OFFENSE A CONSPIRACY TO KILL A FOREIGN LEADER HAS PASSED THE SENATE AND IS PRESENTLY PENDING IN THE HOUSE. SENATE 1437 (THE CRIMINAL CODE REFORM ACT OF 1978) DESIGNED TO REVISE TITLE 18, CONTAINS THE FOLLOWING PROVISION:

QUOTE SECTION 1202. CONSPIRACY AGAINST A FOREIGN POWER.  
(A) OFFENSE.-A PERSON IS GUILTY OF AN OFFENSE IF, WITHIN THE UNITED STATES, HE AGREES WITH ONE OR MORE PERSONS TO

ENGAGE IN CONDUCT OUTSIDE THE UNITED STATES, THE PERFORMANCE OF WHICH WOULD INVOLVE: (1) THE DEATH OF A FOREIGN OFFICIAL OF A FOREIGN POWER WITH WHICH THE UNITED STATES IS NOT AT WAR; OR (2) DAMAGE TO OR DESTRUCTION OF PROPERTY OWNED BY, OR UNDER THE CARE, CUSTODY, OR CONTROL OF, A FOREIGN POWER WITH WHICH THE UNITED STATES IS NOT AT WAR, OR A PUBLIC FACILITY LOCATED WITHIN THE JURISDICTION OF SUCH FOREIGN POWER; AND HE, OR ONE OF SUCH PERSONS IN FACT, ENGAGES IN CONDUCT WITH INTENT TO EFFECT ANY OBJECTIVE OF THE AGREEMENT.

(B) AFFIRMATIVE DEFENSE.-IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT, UNDER CIRCUMSTANCES MANIFESTING A VOLUNTARY AND COMPLETE RENUNCIATION OF HIS SECRET

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CRIMINAL INTENT, THE DEFENDANT PREVENTED THE COMMISSION OF EVERY CRIME THAT WAS AN OBJECTIVE OF THE CONSPIRACY.

(C) BAR TO PROSECUTION.-IT IS A BAR TO A PROSECUTION UNDER THIS SECTION THAT ALL OF THE PERSONS WITH WHOM THE DEFENDANT IS ALLEGED TO HAVE CONSPIRED HAVE BEEN ACQUITTED BECAUSE OF INSUFFICIENT EVIDENCE, NOT OCCASIONED BY A SUPPRESSION ORDER, THAT A CONSPIRACY EXISTED.

(D) DEFENSES PRECLUDED.-EXCEPT AS PROVIDED IN SUBSECTION (C), IT IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT ONE OR MORE OF THE PERSONS WITH WHOM THE DEFENDANT IS ALLEGED TO HAVE CONSPIRED HAS BEEN ACQUITTED, HAS NOT BEEN PROSECUTED OR CONVICTED, HAS BEEN CONVICTED OF A DIFFERENT OFFENSE, WAS INCOMPETENT OR IRRESPONSIBLE, OR IS IMMUNE FROM OR OTHERWISE NOT SUBJECT TO PROSECUTION.

(E) DEFINITION.-AS USED IN THIS SECTION, A RENUNCIATION IS NOT 'VOLUNTARY AND COMPLETE' IF IT IS MOTIVATED IN WHOLE OR IN PART BY A DECISION TO POSTPONE THE COMMISSION OF THE CRIME UNTIL ANOTHER TIME OR TO SUBSTITUTE ANOTHER VICTIM OR ANOTHER BUT SIMILAR OBJECTIVE.

(F) GRADING.-AN OFFENSE DESCRIBED IN THIS SECTION IS A CLASS D FELONY. UNQUOTE (NOTE: CLASS D FELONY PROVIDES FOR MAXIMUM IMPRISONMENT OF FIVE YEARS AND FINE OF UP TO \$100,000.00.) THIS SECTION IS DERIVED FROM THE NEUTRALITY LAWS WITH UPDATED LANGUAGE TO REFLECT CONGRESSIONAL CONCERNS OVER TRANSNATIONAL TERRORISM AND ALLEGED INVOLVEMENT OF U.S. CITIZENS OR RESIDENTS IN ASSASSINATIONS OF FOREIGN LEADERS. IT SHOULD NOTED THAT, EVEN IF ENACTED INTO LAW, THIS WOULD ONLY COVER CONSPIRACIES WHICH WERE DEVELOPED IN THE SECRET

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U.S. AND WOULD NOT COVER A U.S. CITIZEN INVOLVED IN A CONSPIRACY DEVELOPED IN A FOREIGN COUNTRY.

5. THIS INFORMATION IS PROVIDED TO ASSIST EMBASSY IN INFORMING GOT, IF REQUESTED, AS TO THE STATUS OF U.S. LAW WITH RESPECT TO ANY AMERICAN SUSPECTS INVOLVED IN THE ASSASSINATION INCIDENT DESCRIBED IN REFTEL. SHOULD THE SUSPECTS BE IN OTHER COUNTRIES, THE APPLICABLE EXTRADITION AND/OR CRIMINAL LAWS OF SUCH COUNTRIES WOULD, OF COURSE, BE THE CONTROLLING LAW AND THE MATTER WOULD THEN REST BETWEEN THE GOT AND THE OTHER COUNTRY CONCERNED.  
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## Message Attributes

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